

2015 Regular Session

HOUSE BILL NO. 137

BY REPRESENTATIVE HAVARD AND SENATOR MILLS

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(34) and to enact Chapter 6 of Title 49 of the Louisiana  
3 Revised Statutes of 1950, to be comprised of R.S. 49:351 through 357, relative to  
4 privatization contracts; to create and provide for the Privatization Review Act; to  
5 provide for certain requirements and procedures for certain privatization contracts;  
6 to provide for duties of executive branch agencies and agency heads relative to  
7 privatization contracts; to provide for the duties of the legislative auditor relative to  
8 certain privatization contracts; to provide procedures for legislative review and  
9 approval of privatization contracts; to provide for definitions; to provide for certain  
10 prohibitions; to provide for the voidability of privatization contracts; to provide  
11 relative to the records related to privatization contracts; and to provide for related  
12 matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Chapter 6 of Title 49 of the Louisiana Revised Statutes of 1950,  
15 comprised of R.S. 49:351 through 357, is hereby enacted to read as follows:

16 CHAPTER 6. PRIVATIZATION REVIEW ACT

17 §351. Legislative findings

18 The legislature hereby finds and declares that the using of private contractors  
19 to provide public services formerly provided by state employees needs to be  
20 extensively reviewed to ensure that it promotes best practices, ensures that citizens  
21 of the state receive high-quality public services at low cost, and is in the overall best  
22 interest of the state and its citizens.

1           §352. Definitions

2                   For purposes of this Chapter only, the following words and phrases shall have  
3           the following meanings:

4                   (1) "Agency" shall mean an office, department, division, board, commission,  
5                   officer, system, or other organizational unit of the executive branch of state  
6                   government.

7                   (2) "Appropriate standing committees of the legislature" shall mean the  
8                   standing committees of the legislature to which an agency is required to submit a  
9                   report pursuant to R.S. 49:968(B).

10                  (3) "Nongovernmental entity" shall mean a legal entity other than an agency.

11                  (4) "Nongovernmental person" shall mean an individual other than an  
12                  employee of an agency.

13                  (5)(a)(i) "Privatization contract" shall mean an agreement or combination or  
14                  series of agreements by which a nongovernmental person or entity agrees with an  
15                  agency to provide services that are valued at five million dollars or more per year  
16                  and that are substantially similar to and in lieu of services previously provided in  
17                  whole or in part by state employees of an agency.

18                  (ii) An agreement solely to provide engineering or design services shall not  
19                  be considered a privatization contract, and an agreement to provide for the  
20                  construction or repair of any street, road, highway, or bridge shall not be considered  
21                  a privatization contract.

22                  (iii) "Privatization contract" shall not include any contract in effect prior to  
23                  the effective date of this Chapter.

24                  (b) "Privatization contract" shall also mean any agreement or combination  
25                  or series of agreements by which a nongovernmental person or entity agrees to lease  
26                  or rent any state building or facility for five hundred thousand dollars or more.

27           §353. Requirements

28                   A. No agency shall enter into a privatization contract as defined in R.S.  
29                   49:352(5)(a), and no such contract shall be valid, unless the agency, in consultation

1 with the division of administration, first complies with each of the following  
2 requirements:

3 (1)(a) The agency shall prepare a specific written statement of the services  
4 proposed to be the subject of the privatization contract, including the specific  
5 quantity and standard of quality of the subject services.

6 (b) The agency shall solicit competitive bids or proposals for the  
7 privatization contract based upon the statement required pursuant to Subparagraph  
8 (a) of this Paragraph.

9 (c) The statement shall be a public record, shall be filed with the agency and  
10 with the division of administration, and shall be transmitted to the legislative auditor  
11 and the appropriate standing committees of the legislature upon its completion.

12 (2)(a) The agency shall prepare a comprehensive written estimate of the  
13 costs of state employees providing the subject services in the most cost-efficient  
14 manner. The estimate shall include all direct and indirect costs of state employees  
15 providing the subject services, including but not limited to retirement, insurance, and  
16 other employee benefit costs.

17 (b) Such estimate shall remain confidential until after the final day for the  
18 agency to receive bids or proposals for the privatization contract pursuant to  
19 Paragraph (1) of this Subsection, at which time the estimate shall become a public  
20 record, shall be filed with the agency and with the division of administration, and  
21 shall be transmitted to the legislative auditor and the appropriate standing  
22 committees of the legislature for review pursuant to R.S. 49:354.

23 (3) After soliciting and receiving bids or proposals, the agency shall publicly  
24 designate the nongovernmental person or entity to which it proposes to award the  
25 contract. The agency shall prepare a comprehensive written analysis of the contract  
26 cost based upon the designated bid or proposal, specifically including the costs of  
27 transition from public to private operation, of additional unemployment and  
28 retirement benefits, if any, of additional retirement costs, if any, and of monitoring  
29 and otherwise administering contract performance. If the designated  
30 nongovernmental person or entity proposes to perform any or all of the contract

1 outside the boundaries of the state or if the designated nongovernmental person or  
2 entity is domiciled outside the boundaries of the state, the analysis of the contract  
3 cost shall indicate the amount of income tax revenue, if any, which will be lost to the  
4 state by the corresponding elimination of state employees and any additional loss of  
5 revenue to the state due to the domicile of the nongovernmental person or entity, as  
6 determined by the Department of Revenue to the extent practicable.

7 (4) The head of the agency shall certify in writing to the legislative auditor  
8 and the appropriate standing committees of the legislature that:

9 (a) He has complied with all provisions of this Section and of all other  
10 applicable laws.

11 (b) The quality of the services to be provided by the designated  
12 nongovernmental person or entity is likely to satisfy the quality requirements of the  
13 statement prepared pursuant to Paragraph (1) of this Subsection and to equal or  
14 exceed the quality of services which could be provided by state employees.

15 (c) The contract cost, according to the analysis required by Paragraph (3) of  
16 this Subsection, will be less than the cost estimated pursuant to Paragraph (2) of this  
17 Subsection, taking into account all comparable types of cost and analysis of lost tax  
18 income, if any.

19 (d) The designated nongovernmental person or entity and its supervisory  
20 employees, while in the employ of the designated nongovernmental person or entity,  
21 have no adjudicated record of substantial or repeated noncompliance with any  
22 relevant federal or state regulatory provision, including but not limited to provisions  
23 concerning occupational safety and health, nondiscrimination, environmental  
24 protection, and the Code of Governmental Ethics and other conflicts of interest  
25 provisions and have no record of substantial or repeated failure to meet performance  
26 measures or goals in any prior or current contract with the state.

27 (e) The proposed privatization contract is in the public interest in that it  
28 meets the applicable quality and fiscal standards set forth in this Section.

1           B.(1) A copy of the proposed privatization contract shall accompany the  
 2           certification transmitted to the legislative auditor and appropriate standing  
 3           committees of the legislature for review pursuant to R.S. 49:354.

4           (2) The agency head shall send each member of the legislature a copy of the  
 5           proposed privatization contract and the certification via electronic mail on the same  
 6           day he transmits those documents to the legislative auditor and appropriate standing  
 7           committees of the legislature.

8           §353.1. Lease and rental agreements

9           A. No agency shall enter into a privatization contract as defined in R.S.  
 10           49:352(5)(b) and no such contract shall be valid unless the agency, in consultation  
 11           with the division of administration, first complies with each of the following  
 12           requirements:

13           (1) The agency shall prepare a specific written statement of the fair market  
 14           rental or lease value of the state building or facility based upon documented  
 15           comparables.

16           (2) The statement shall be a public record, shall be filed in the agency and  
 17           in the division of administration, and shall be transmitted to the legislative auditor  
 18           and the appropriate standing committees of the legislature upon its completion.

19           (3) The agency shall publicly announce the availability of the building or  
 20           facility for lease or rent. If more than one nongovernmental entity or person  
 21           expresses documented interest in the lease or rental, the agency shall engage in a  
 22           competitive process to designate the nongovernmental entity or person with whom  
 23           it intends to negotiate.

24           B. The head of the agency shall certify in writing to the legislative auditor  
 25           and the appropriate standing committees of the legislature that:

26           (1) He has complied with all provisions of this Section and of all other  
 27           applicable laws.

28           (2) The designated nongovernmental person or entity and its supervisory  
 29           employees, while in the employ of such designated nongovernmental person or  
 30           entity, have no adjudicated record of substantial or repeated noncompliance with any

1 relevant federal or state regulatory provision, including but not limited to provisions  
2 concerning occupational safety and health, nondiscrimination, environmental  
3 protection, and the Code of Governmental Ethics and other conflicts of interest  
4 provisions.

5 (3) The proposed privatization contract is in the public interest and the  
6 reasons therefore.

7 C.(1) A copy of the proposed privatization contract as defined in R.S.  
8 49:352(5)(b) shall accompany the certification transmitted to the legislative auditor  
9 and appropriate standing committees of the legislature for review pursuant to R.S.  
10 49:354.

11 (2) The agency head shall send each member of the legislature a copy of the  
12 proposed privatization contract and the certification via electronic mail on the same  
13 day he transmits those documents to the legislative auditor and appropriate standing  
14 committees of the legislature.

15 §354. Legislative review

16 A.(1) The legislative auditor shall review each privatization contract and  
17 certification no later than thirty days after receipt. After completion of the review,  
18 the legislative auditor shall submit his findings to the appropriate legislative standing  
19 committees. Such findings shall be in writing and shall state the legislative auditor's  
20 findings regarding the agency's compliance with the requirements of R.S. 49:353 or  
21 353.1 and shall specifically include the legislative auditor's independent review of  
22 all relevant facts regarding any of the agency's findings required by R.S.  
23 49:353(A)(5) or 353.1.

24 (2) The legislative auditor shall send each member of the legislature a copy  
25 of his findings via electronic mail on the same day he transmits his findings to the  
26 appropriate standing committees of the legislature.

27 (3) Each agency shall cooperate and assist the legislative auditor in his  
28 review and, notwithstanding any law or privilege to the contrary, shall provide all  
29 documents and other records to the legislative auditor that he deems necessary to  
30 complete his review.

1           B. The appropriate standing committees of the legislature shall review the  
2           certification and proposed contract and may disapprove any such contract within a  
3           reasonable time, not to exceed forty-five days after receipt of the findings of the  
4           legislative auditor. If either standing committee disapproves the contract, the agency  
5           shall not enter into the contract. If neither standing committee disapproves a contract  
6           within the forty-five-day time period or if both committees vote to approve the  
7           contract, the agency may enter into the contract.

8           §355. Prohibitions; voidability

9           A. No amendment to a privatization contract shall be valid if it has the  
10          purpose or effect of avoiding any requirement of this Chapter.

11          B. No agency shall transfer or grant to another person or entity the authority  
12          to negotiate any privatization agreement in any manner to subvert the provisions of  
13          this Chapter or the Public Records Law.

14          C. Any contract entered into by the state or any of its agencies in violation  
15          of this Chapter shall be void ab initio.

16          §356. Post-privatization review

17          A. After each complete year of a privatization contract as defined in R.S.  
18          49:352(5)(a), the agency shall report to the appropriate standing committees of the  
19          legislature the following information:

20               (1) An analysis of the nongovernmental person's or entity's performance  
21               under the privatization contract, specifically including performance measures.

22               (2) All complaints received and the agency's and contractor's response to  
23               each complaint.

24          B. After each complete year of a privatization contract as defined in R.S.  
25          49:352(5)(b), the agency shall report to the appropriate standing committees of the  
26          legislature the following information:

27               (1) An analysis of the nongovernmental person's or entity's compliance with  
28               the terms of the privatization contract.

29               (2) All complaints received and the agency's and contractor's response to  
30               each complaint.

1                   (3) A current analysis of the fair market rental or lease value of the state  
2                   building or facility based upon documented comparables.

3                   §357. Records

4                   Notwithstanding any other provision of law to the contrary and except as  
5                   otherwise specifically provided by this Chapter, all records related to a privatization  
6                   contract shall be available for examination, inspection, reproduction, and copying in  
7                   the same manner as provided by the Public Records Law regardless of the agency,  
8                   official, person, or legal entity in possession of the record.

9                   Section 2. R.S. 44:4.1(B)(34) is hereby amended and reenacted to read as follows:

10                   §4.1. Exceptions

11   \*           \*           \*

12                   B. The legislature further recognizes that there exist exceptions, exemptions,  
13                   and limitations to the laws pertaining to public records throughout the revised  
14                   statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
15                   limitations are hereby continued in effect by incorporation into this Chapter by  
16                   citation:

17   \*           \*           \*

18                   (34) R.S. 49:220.25, 353(A)(2)(b), 956, 997, 1055

19   \*           \*           \*

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_